

Provincial Legislature.

HOUSE OF ASSEMBLY.

Wednesday, January 21.

BYE ROADS.

Hon. Mr. Johnston presented a Report from the Bye Road Committee, from which it appeared that the Committee had recommended the appropriation of the sum of £15,000 for Bye Roads this year, to be divided according to the scale included in the Report.

Mr. L. A. Wilmot opposed the reception of the Report: he was a member of the Committee, but had not signed the report, and he would oppose it in every possible way. The scale was not a fair one, with reference to the respective wants and necessities of the different counties; and York, especially, was apportioned a far less share of the bye road money than it was entitled to. Every year showed the necessity of some fixed data, on which to found these appropriations; at present they were groping in the dark, and every year it was a regular scramble, who should get most. With regard to the extensive back settlements and population of York, the scale was not a fair one, and therefore he opposed it. Next year, he would take care that a correct statement of the statistics of York should be laid before the House, which would show that it ought not for a moment to be compared with Northumberland and some other counties, which were now rated as equal to it. He did not wish to make captious objections, but York ought to have £175 more than Northumberland; and from honest conviction and knowledge he asserted that the division was not a fair one. He therefore protested against this scale.

Mr. Connell also opposed the reception of the report, particularly with regard to the county of Carleton, for the same reasons as advanced by Mr. L. A. Wilmot.

Mr. End concurred in the idea that there should be some data to go upon in this matter, and he hoped that some plan would be devised to effect that object; but with regard to the present scale, if any body had a right to complain, it was himself, because Gloucester certainly was not placed in the relative situation that it ought to be in. In 1833, Gloucester was ranked superior to York, Carleton, Sunbury, Kent and Saint John: in 1836 the same principle was in some degree abided by, but although since that time the Legislature had admitted the increased population and importance of that county, by passing a bill to divide it into two counties, yet in 1837 it was lowered in the Bye Road scale, and put below York, Carleton, Queen's, Westmorland, Charlotte, King's and Northumberland. He however did not want to complain particularly of the present scale; because, in the absence of all data as a guide for the deliberations of the Committee, this scale was as good as one as they could at present be guided by. He would therefore support the Report, but at the same time, he approved the suggestions relative to the adoption of a better mode of proceeding.

Hon. Mr. Johnston observed, that the same feelings as were now exhibited by the Hon. Members for York and Carleton appeared to have been felt by all the Members of the Committee, when in deliberation on the subject; all seemed to think that their own counties had not a sufficient proportion in comparison with the rest; but, having no fixed data to proceed upon, it was thought better to adopt, as nearly as possible, the scale agreed upon after great deliberation last year. He certainly did not know how correct data could be fixed; population would not be a proper guide for the appropriation of bye road money, because some counties had towns, with large populations, which of course had no bye roads. Then a particular plan of each county would not effect the object, because in some counties the nature of the soil caused a much greater expense in making and maintaining roads than in others, and therefore the mere extent of bye roads in each county would not be a sufficient rule. He was at a loss to suggest any mode, unless one person should be appointed, to travel over the whole Province, to examine the extent and condition of all the bye roads in it, and to report particularly upon them; on which report implicit reliance might be placed by the Bye Road Committee; but at present he knew of no other course to be adopted, than to accept this Report. If the scale should now be broken up it was evident, from the conflicting sentiments that had already actuated Hon. Members on that Committee, that a satisfactory scale would not be come at.

Mr. J. R. Partelow was of the same opinion, and was for the reception of the report; and although the Committee never had such information as would enable them to come to a perfectly correct conclusion, yet they had done pretty nearly equal justice to all, as far as the information they possessed would enable them. The plan suggested by the Hon. and learned Member for York would not answer, for the reason urged by the Hon. Member who spoke last; it was impossible to come to a perfectly correct conclusion. He was satisfied that York had not quite as much as it ought to have, and he would have been willing to give it a little more; but it was suggested in the Committee, that probably a special grant might be made in Committee of Supply, in aid of the erection of a Bridge over Eel River, which would supply the deficiency, and give York rather more in proportion than any other county. He hoped therefore the opposition of this Report would be withdrawn.

Mr. Street said, that he had always maintained that there should be some data to go by, in apportioning the Bye Road money, and he had on a former occasion brought forward a proposition on the subject, which however was overruled. He did not agree, that York had been unfairly dealt with on this occasion; but on the contrary thought that it had been better dealt with than Northumberland. The Hon. Member then at some length contended, that in proportion to its population extent, contribution, to the revenue, &c., Northumberland was worthy of more consideration, and concluded by supporting the Report, as the fairest that could be agreed upon under present circumstances.

Mr. Allen was against the reception of the report. As to having no data as a guide;

that was of no consequence at all; because it was the object of every Member, in these Road Committees, to get as much money for his own county as he could. Agricultural counties required much more bye road money than those on the sea-coast; York and Carleton perhaps admitted of back settlements to a greater extent than any other county in the Province. But it was not worth while to talk of data; if the land was all entirely cleared and settled, it would be just the same thing; the object of Members still would be, to obtain as much money as possible for their counties. Population was not a guide in this matter, because the sea-ports always had a great proportion of transient population, and those maritime counties could not possibly have as many back settlements, as those in the interior. The Hon. Member added a few other observations, comparing York with other counties, and concluded by opposing the reception of the report, as he did not consider the scale a fair one.

Mr. Fisher said, that a more unfair scale could not have been made. Year after year there had been a general fight for bye road money, and therefore it appeared that last year the House adopted a scale, which was now nearly copied. But it was by no means a fair one; it was a miracle that there was any population at all in York County, because the money was so unfairly divided. [Laughter.] There were upwards of 400 miles of bye road in that County, and more than 50 back settlements; and it never could have a population at all, till more money was given to promote the settlement of the County. [Great laughter.] That was a fact; they could not get the population without the money. [Renewed laughter.] The Hon. Member then, after drawing various comparisons between the several counties, opposed the reception of the Report.

Mr. Gilbert said, that at first he had felt inclined to support the opposition; but after hearing the Hon. Member who spoke last propose to take £80 from Queen's County and add it to York, he thought it much better to adhere to the present scales, and therefore he would be for accepting the report. [Laughter.]

Mr. Hanington thought some of the counties would have rather more than they were entitled to, in proportion to others, but was for the reception of the report.

Mr. Brown observed, that after all that had been said, no reasonable man could attach any blame to the Select Committee; because it was evident, that the opinions of Hon. Members were so conflicting, that if this scale should be broken up, no satisfactory one at all would be agreed upon; and therefore this discussion shewed the impossibility of giving any satisfaction to Hon. Members generally. It must be admitted, that that could not be done, without some data to go by; he had endeavoured, in former Sessions, to get at some fair representation on the subject, but had always failed in the attempt; though the necessity of such information was every year more apparent. The House had gone on, from year to year, in the same unsatisfactory way; and last year after much trouble and difficulty, the Road Committee had brought in a scale, the principle of which was now again adopted. It was as correct a scale as could be made up under the circumstances, and therefore, as the state of the bye roads could not have altered much in one year, the House had better adhere to it at present. He was for receiving the report.

Messrs. Weldon, Wilson, J. M. Wilmot, Woodward, and Jordan also supported the Report; and upon the question being put, it was received without a division, and, on motion of Mr. Hayward, referred to the Committee of Supply.

The following is the Report of the Committee:

"The Committee appointed to enquire into the state of all the Roads of Communication in the Province, and to report what sums it may be necessary to grant for repairing and improving, as well the Great as Bye Roads, have had under their consideration the subject of the Bye Roads, and recommend

"That the sum of £15,000 be granted for the Bye Roads in the several Counties, and apportioned as follows, viz:

For the County of York,	£1480
Do. do. Carleton,	1480
Do. do. Queen's,	1380
Do. do. Gloucester,	1200
Do. do. Westmorland,	1680
Do. do. Charlotte,	1680
Do. do. King's,	1580
Do. do. Saint John,	1180
Do. do. Kent,	1010
Do. do. Sunbury,	825
Do. do. Northumberland,	1555

£15,000

"HUGH JOHNSTON,
J. R. PARTELLOW,
J. W. WELDON,
GEORGE HAYWARD,
WILLIAM END,
W. WILSON,
J. A. STREET,
JAMES BROWN, Junior,
SAMUEL FREEZE.
Committee Room, 14th January, 1838.

Friday, January 26.

SUNBURY ELECTION.

This being the day appointed for taking into consideration the petition of Thomas Odier Miles, Esq., complaining of the undue election and return of Henry T. Partelow, Esq., a Member for Sunbury, at 12 o'clock the order of the day was read, and Counsel for the petitioner and sitting Member admitted to the Bar.

The Clerk then proceeded to draw the names of eleven Members from the Ballot Boxes, and lists of the names so drawn being handed to the respective Counsel, they proceeded alternately to strike off names, till the lists were reduced to five, exclusive of the two nominees;

and upon the reduced list being returned to the Clerk, the following Hon. Members were declared a Select Committee, to try the merits of the said petition, viz:

Messrs. Jordan, Hanington, Hon. Mr. Crauc, Messrs. Hill, and M-Leod.
Mr. Brown—Nominee for the Petitioner.
Mr. Weldon—Nominee for the sitting Member.

Who were thereupon sworn at the Clerk's Table, and directed forthwith to proceed with their judicial duties, in the Supreme Court Room.

Counsel for the petitioner—L. A. Wilmot, Esquire.

Counsel for the sitting Member—Hon. E. B. Chandler, and G. F. S. Perton, Esq.

Saturday, January 27.

WILLS.

The Bill for amending the law relating to Wills was committed for further consideration. Mr. M-Leod in the Chair.

Mr. Street said, that since this bill was first committed, he had carefully examined it and made an abstract of its provisions. The bill was predicated upon an Act very recently passed by the Imperial Parliament, which repealed most of the old Acts of Parliament relative to Wills, that had hitherto been in force in this Province. It was therefore necessary that such a bill should also be passed here, because, otherwise, questions of great importance might arise, whether an Act of Parliament, passed with an application to this Colony, and afterwards repealed by another Act of Parliament, not extending to the Colonies, would still remain in force in this Province. He (Mr. S.) certainly thought that the courts would not construe an Act, so repealed, to be in force in this Colony; and therefore this bill was necessary. The Act recently passed at home was a very great improvement of the law relating to Wills; and, with very little modification, would answer this Colony better than the old laws. This bill was very nearly a transcript of that Act; it contained a variety of changes of the law respecting Wills, and removed many questions of a doubtful nature which had hitherto existed. The Hon. Member then proceeded to state a brief abstract of the various sections of the bill, *scilicet*, the principal points of which appeared to be the following: the law respecting *in-rem* and *in-fam* *coverts* appeared to be unaltered; the 7th section altered and simplified the law very considerably, with respect to the manner of making Wills; it would not require the same formalities as were necessary under the old law, which had caused great inconvenience, and had nullified many Wills that ought to have been in full force. It had been found at home, that the requisition of three attesting witnesses to a Will, and the formality of sealing, had proved very inconvenient; it often happened, that persons delayed making their Wills till they found themselves on their death beds, and in such cases professional assistance in making their Wills could not always be procured in time, and if such Wills were informally drawn, and wanted either sealing or the attestation of three witnesses they would be null and void, although the intentions of the testator might have been fully and plainly described. This section therefore introduced a much more simple form of making Wills: it required no seal at all, and only two witnesses, but simply that the Will should be in writing, and signed by the testator and the two witnesses. The 9th section declared that the law relative to nuncupative Wills, or the Wills of soldiers, and sailors, should remain unaltered; the 10th section declared, that this bill should not affect or prejudice the existing Acts of Parliament, with respect to the Wills of petty officers and seamen's wages. The 12th section removed a difficulty with regard to devices being witnesses to Wills. At present, the fact of a devisee being a witness to a Will, in some cases rendered the whole Will invalid; but this bill would enact, that such witnessing should render the Will invalid only so far as concerned the witnessing device, and that the whole of the Will, with such exception, should be of full force and effect. The Hon. Member then said, that as the bill was a very long one, he would not go through the whole of the sections, but any further points which the Committee might think required explanation, could be spoken to as the bill proceeded. The bill took up the whole Law on the subject of Wills, and embodied every requisite enactment on the subject in one Act; its provisions would be highly beneficial and wholesome for this country, would prevent the recurrence of a great many litigated questions, that had often arisen under the present Law, and would promote the intentions of Testators much more simply and fully than the present Law did.

The bill was then read section by section, and agreed to without opposition or amendment; such cursory remarks as were elicited on the various sections, being merely questions as to construction, &c., from the non-legal Members, and explanatory replies from the legal gentlemen, possessing no interest for reporting.

NOTICE.

THE CHURCH SOCIETY of the Archdeaconry of New Brunswick, will be held at Fredericton, on the 9th of February; and the General Committee (consisting of the Missionaries and the Lay Deputies from the several Parishes or Missions) is to meet at the same place, on the two days, or more if need be previous to the Anniversary meeting, to make the appropriation of the funds which shall then be at the disposal of the Society.

It is most particularly requested that the recommendations of the several local Committees may be presented as early as possible in the week, that they may receive due attention from the General Committee.

The Editors of other New Brunswick Papers will confer a favour by inserting this Notice. Fredericton, January 23, 1838.

FOR SALE OR TO LET.

And possession given in June next. THE HOUSE now occupied by the Subscriber, situated at the upper end of King Street. The property comprises four Town Lots, has convenient out Buildings, a good Garden, and a Field adjoining in the rear. Terms made easy. JAMES A. MACLAUCHLAN Fredericton, 24th January, 1838.

ROYAL GAZETTE.

FREDERICTON, JANUARY 31, 1838.

Central Bank of New Brunswick.

HENRY G. CLOPPER, Esq. President.
Director this week.....Mr. OLIVER SMITH.
Discount Days.....Tuesdays and Fridays.
Bills or Notes offered for Discount must be left at the Bank, enclosed and directed to the Cashier, before two o'clock on Mondays and Thursdays.

Bank of Fredericton.

ASA COY, President.
Director this week.....Mr. W. D. H. CUTT.
Discount Days.....Mondays and Thursdays.
Notes or Bills for discount are to be left at the Bank, enclosed to the Cashier, before 3 o'clock on Saturdays and Wednesdays.

Saving's Bank.

Trustee for next week.....JAMES TAYLOR, Esq.

Central Fire Insurance Company.

Office open every day, at Mr. Minchin's Brick House, opposite the Parade, (Sunday excepted,) from 11 to 2 o'clock.

B. WOLHAUTER, President.

Committee for the present month.
CHARLES McPHERSON and CHARLES FISHER.

Alms House and Work House.

Commissioner for the week commencing to-morrow.
GEORGE MINCHIN, ESQUIRE.



By Authority.

HEAD QUARTERS, FREDERICTON,

27th January, 1838.

MILITIA GENERAL ORDERS.

His Excellency the Lieutenant Governor desires the Officers, non-commissioned Officers and Men of the 1st Battalion York, and the Militia of the City of Saint John, by whom the duties of the Garrison of Fredericton and Saint John have been performed, during the absence of the regular Troops, will receive His Excellency's thanks for their voluntary performance of a highly useful service, and His warm acknowledgment of the cheerful alacrity, steadiness and regularity with which that duty has been performed.

PROMOTIONS &c.

James W. Peters, to be 2d Lieutenant in the Saint John City Rifle Battalion.

3d Battalion King's County.

James Northrop, Gent. to be Cornet of the Troop of Cavalry.

Elmas Sewell Wetmore, Gent. to be Quarter Master with the rank of Lieutenant, vice Hallet, removed from the County.

By Command,
GEO. SHORE, A. G. M.

ROYAL GAZETTE OFFICE.

The Proprietor of the Royal Gazette Office having recently visited Great Britain for the purpose of greatly adding to his stock of printing materials, and having also erected an entirely new building, for the purpose of carrying on more extensively the operations of the concern, entertains an idea that a description of the whole may not only be interesting to those qualified to judge of such matters, but may also shew the very extensive capabilities of his establishment. The public printing required for the purposes of the Government of this Province, is of a very voluminous nature, and demands the employment of a considerable capital—a very large amount of material, and much manual labour; and questions having, from time to time heretofore arisen as to the capability of the Royal Gazette Office to execute the multifarious works required for the public service, the Queen's Printer believes that the following *exposé* of the resources of his establishment will afford a satisfactory answer to such questions.

The building itself was recently erected for the express purpose of the establishment, at an expense of nearly £400, and contains the following apartments and materials, viz:

GROUND FLOOR.

Room No. 1.—30 pair Cases of Type; Stands, Racks, Tables, Desks, &c., and two large Marble Imposing Stones, 6x3 feet.

Room No. 2.—4 of the most improved British and American Presses, (3 of which are in active operation, and the fourth will be immediately erected); 3 improved patent *inking* machines, and other materials for Press Room.

UPPER FLOOR.

Room No. 1.—A superior Hydraulic Press; 20 pair Cases of Type; Stands, Tables, Racks, &c.

Room No. 2.—Paper Room, containing a standing stock of 350 reams of Printing paper, Cards, Parchments, &c. A splendid Copper Plate Press, and a variety of other materials.

Room No. 3.—30 pair Cases of Type; Stands, Imposing Stones, Racks, &c.

Room No. 4.—Editor's Room.

Room No. 5.—Drying Room, 48 ft. in length. Also, additional apartments for other purposes connected with the business of the concern.

This establishment previously to the late extensive addition was valued at £3000, to which the Proprietor has now added materials which cost him about £2000 sterling. The business of the office at present requires the constant employment of 9 Journeymen and 4 Boys; and the annual expense of conducting it (exclusive of the outlay of capital) is now about £1,250 for Labour, and £500 for Stationery, Fuel, &c.

The Proprietor therefore flatters himself from its present resources and the large quantity of entirely new recently imported Type, from the very best British Foundries, that he can execute all the requirements of Government in his line, as well as any private works that may be intrusted to his care, with the utmost promptitude and in the most satisfactory style.

From the Quebec Mercury, January 21.

We are enabled to lay before our readers the following gratifying intelligence from Upper Canada, contained in extracts from the

Montreal Herald and the Courier Offices of Friday last, received by Post this day:

VICTORY OVER THE REBELS AT AMHERSTBURG, UPPER CANADA.

The Kingston Herald of Tuesday, mentions, that the Steamer Traveller had just arrived from Toronto, bringing accounts of a gallant action at Amherstburg. The following are the particulars:

A gang of pirates robbed the arsenal at Detroit, loaded a schooner with the spoils and sailed to Amherstburg, and fired on the Town. The inhabitants had no arms, but they collected in the night armed with pitchforks and whatever came to hand; they then attacked and captured the schooner, killing one man and taking 20 prisoners, with 400 stand of arms, 3 cannon and a large supply of the munitions of war. Thus in every quarter defeat and ruin wait on the rebels and pirates. 50 rebels have also been killed on Navy Island, and 4 or 5 of Col. MacNab's army. At the capture of the schooner at Amherstburg, David Anderson was killed, and Dr. Keller, Robert Davis, Walter Chase and Wm. Dodge taken.

From the Kingston Chronicle and Gazette Extra. Half-past 11, a.m. January 16.

We are indebted to John S. Cartwright, Esq. M. P. P. for the following Message from the House of Assembly, by His Excellency the Lieut. Governor. The intelligence contained in this document, of the resignation of His Excellency, will, we are persuaded, be received by the loyal inhabitants of this colony, with the most unfeigned regret and sorrow. His successor is Col. Sir George Arthur, who was for a time Governor of Van Dieman's Land.

The Lieutenant Governor informs the House of Assembly, that in consequence of this Province being invaded and assailed by a foreign enemy, and being the scene of actual military operations, Col. Foster, the officer in command of Her Majesty's Forces, has assumed the entire military operations and command over the Troops—that he is also in command of the Militia, and that the Commissary General at Quebec has communicated to the officer in charge of the Commissariat here, that consistently with the rules of the service, no expenses can be allowed unless sanctioned by the authority of the Military Commander, upon whom the protection of the Province has thus necessarily devolved.

The Lieut. Governor takes this opportunity to communicate to the House of Assembly, that having had the misfortune to differ from Her Majesty's Government on one or two points of Colonial Policy, he felt it his duty, on the 10th of September last, respectfully to tender to Her Majesty's principal Secretary of State for the Colonies the resignation of the important station which for a short time he has had the honor to hold in this Province.

His resignation having been graciously accepted, the Lieutenant Governor has to inform the House of Assembly that he yesterday received official information that Her Majesty has been pleased to appoint Colonel Sir George Arthur to be Lieutenant Governor of Upper Canada, and that His Excellency may be expected in a few days.

Under the peculiar circumstances in which the Province is at present placed, the Lieutenant Governor feels confident that the House of Assembly will rejoice with him at the approaching arrival of an officer of high character and considerable experience, whose rank in the army will enable him to combine the military command with the civil government of this Province.

Government House,
15th Jan. 1838.

This day at four o'clock His Excellency came down to the House, and gave the Royal Sanction to the Bill for the Suspension of the Habeas Corpus Act, and the Bill for trying Foreigners taken in arms by Court Martial.—*Toronto Patriot*, Jan. 12.

Letters of a late date from Sorel, mention the arrival there of the 85th Regt. on Friday last, in good order and high spirits. It is expected that they will have to move again very soon; two companies of the 66th were ordered to St. Hyacinthe and St. Césaire, to observe the movements of *Jean Baptiste*, and his allies, who are said to be mustering on the other side of the line 45.

Colonel Booth of the 43d Regt., we are sorry to learn, has been confined to his bed since his arrival at Chambly.

From the Quebec Gazette, January 23.

GOOD NEWS—CLOSING THE CONCERN.
The following is from the Montreal Morning Courier Office, received by this morning's mail:

OFFICIAL.

Head Quarters, Toronto, January 16, 1838.

MILITIA GENERAL ORDER.

Colonel Foster, commanding the forces in Upper Canada, has great satisfaction in announcing the evacuation by the rebels and their piratical association of Navy Island.

As the particulars, however, have not reached the Colonel Commanding, they are unavoidably deferred for a future order.

J. Foster, Colonel Commanding in Upper Canada.

Two companies of the 24th regt. are in possession of the Island. Mackenzie escaped—Van Rensselaer reported killed, along with about 50 rebels—about 150 prisoners.

Since the above was received, we have seen a letter from Toronto, dated 16th inst. in which it is stated that Navy Island is in full possession of the British troops, two companies of the 24th regiment being on it. Mackenzie has escaped, and it is said that Van Rensselaer is among the list of killed, along with about 50 of the rebels. About one hundred and fifty have been taken prisoners. The rebels were nearly starving when the island was taken, as only about two days provisions were found on it. The gallant bombardment on the 14th and 15th, by Captain Glasgow, caused the greatest number of the rebels to evacuate the Island.

The American authorities carried their guns off the Island.